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OGC 70-0735

11 May 1970

OGC REVIEW COMPLETED

MEMORANDUM FOR: Director of Personnel

SUBJECT: Disposition of Awards from Foreign Governments

1. Reference is made to your memoranda requesting the assistance of this office in obtaining the release of certain foreign awards presented to Agency employees.

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2. The Constitution provides at Article 1, Section 9, Clause 8: 'No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.' Thus, absent Congressional consent, there is an absolute prohibition on accepting gifts and awards from foreign governments. Congress has enacted a law wherein employees of the Federal government could, within certain narrow limits, accept gifts and awards from foreign governments. In effect, the Congress gave its consent in advance.

3. The undersigned has already spoken to the question of gifts by an opinion of 10 October 1968 (OGC 68-1992) and will not expound further except to emphasize my paragraph 6(c) to correct what is apparently an erroneous impression held by some. That paragraph stated:

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When it is determined that a Government property gift which was presented to an Agency employee under official cover is not to be retained for official use, I am of the opinion the law requires, and good security dictates, forwarding it to the Chief of Protocol.

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Paragraph 6(c) was specifically intended to reverse and amend the cited provision of the earlier opinion. Where an employee is under

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purpose of this new law is to make uniform the treatment of all Government employees who receive foreign gifts and awards, we are of the opinion that the law requires, and good security dictates, forwarding the gift to the Chief of Protocol for disposition. This point is raised because a member of your office is advised the Agency is still retaining gifts which are not to be used for official purposes.

4. Returning to the question of awards by Public Law 89-673, Congress, in effect, gave its consent in advance to the acceptance of awards from foreign governments within specified limits.

Sec. 5. Congress hereby gives its consent to a person to accept, retain, and wear a decoration which has been tendered in recognition of active field service in time of combat operations or which has been awarded for other outstanding or unusually meritorious performance, subject to the approval of the department, agency, office, or other entity in which such person is employed and the concurrence of the Secretary of State. In the absence of such approval and concurrence, the decoration shall be deposited by the donee for use and disposal as the property of the United States in accordance with the rules and regulations issued pursuant to this act. (Emphasis added.)

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5. At Section 7 Congress empowered the President to promulgate rules and regulations necessary to carry out the purposes of the act and by Executive Order 11320, 9 December 1966, the President delegated such authority to the Secretary of State.

The Secretary of State, and, when designated by the Secretary of State for such purpose, the Under Secretary of State, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority conferred upon the President by Section 7 of the Foreign Gifts and Decorations Act of 1966 to prescribe rules and regulations to carry out the purposes of that Act.

In exercising that delegation of authority the Secretary of State has promulgated regulations which are found at 3 Foreign Affairs Manual 621.5.

6. In your memorandum you quote a statement from paragraph 4 of my memorandum of 10 October 1968 as indicating that "(a)pproval for release will normally be given unless, from the special or unusual circumstances involved, it would appear to the Chief of Protocol to be improper to release the item." Your quote is somewhat out of context, however, because my paragraph 4 begins: "(w)ith respect to gifts or decorations on deposit through 14 October 1966, Sec. 621.5 of the Department regulation states:..." Gifts and decorations which were on deposit with the Department through 14 October 1966, according to the regulations issued by the Secretary, should have been or should be considered for release as you have quoted. However, decorations received after 14 October 1966 are specifically provided for at 621.6d. "Decorations received which have been tendered in recognition of active field service in connection with combat operations, or which have been awarded for outstanding or unusually meritorious performance, may be accepted and worn by the donee with (1) the approval by the appropriate agency and (2) the concurrence of the Chief of Protocol." The legislative history of the Act supports the limited and specific language of the Secretary's regulation.

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7. The listing of awards which you have provided indicates some forty awards for twenty-nine individuals and of these, only four were approved for release by the Department. However, only two awards predated 14 October 1966. It would appear to this office that the Department has, within the exercise of its responsibility, examined the forty awards and ruled that only four met the test of the statute and the regulations--active field service in time of combat operations or... other outstanding or unusually meritorious performance.

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under official cover, we are hard pressed to find a justification for invoking those sections. The law and its legislative history clearly state that the intent is to make uniform the laws and regulations on the acceptance of gifts and awards from foreign governments for all Government employees. In fact, the final paragraph of the Act's legislative history states:

It meets the requirement of the Constitution that gifts and decorations offered by foreign governments have the approval of the Congress. It treats equally all officers and employees in the executive, legislative, and judicial branches of the Government. It is applicable to military as well as civilian personnel.

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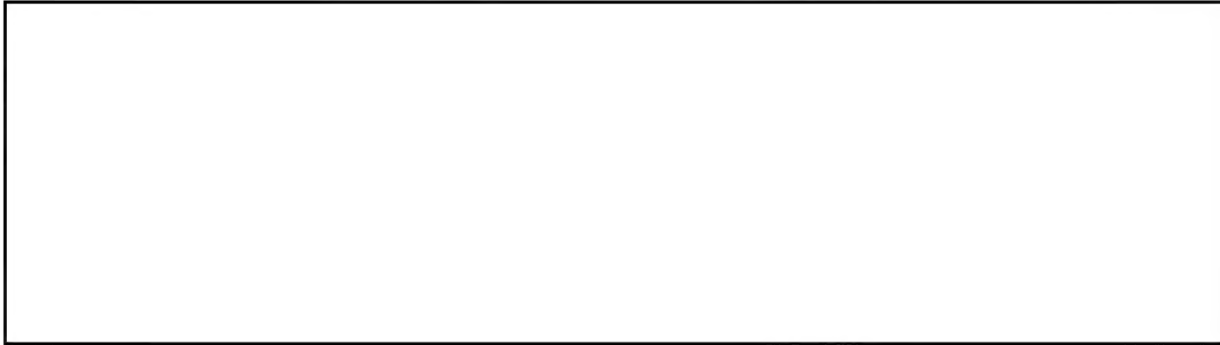
Accordingly, when a decoration has been presented to an Agency em-

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OGC 68-1992

10 October 1968

MEMORANDUM FOR: Director of Personnel

SUBJECT: Disposition of Gifts from Foreign Governments

1. You have requested the opinion of this office as to what disposition may be made of gifts presented to Agency employees by a foreign government or an employee or agent of same. As you know, there is a relatively new law on this subject, Public Law 89-673 of October 1966.

2. By the above-named Act, Congress gave, within certain limits, its general consent for employees to accept gifts and decorations from foreign governments. A gift of minimal value can be accepted by an employee or a member of his household but, "gifts of more than minimal value shall be deemed to have been accepted on behalf of the United States and shall be deposited by the donee for use and disposal as the property of the United States in accordance with the rules and regulations issued pursuant to this Act." Sec. 4, PL 89-673. The Act further directs that the rules and regulations necessary to carry out its purposes are to be prescribed by, or under the authority of, the President; Executive Order 11320 of 13 December 1966 delegated that authority to the Secretary of State.

3. State Regulations (3 FAM 621) prescribe that a gift of minimal value is one which has a retail value in the United States not in excess of \$50. When a gift of more than minimal value is tendered, the donor should be advised that it is contrary to the policy of the United States to accept such a gift, but when it appears to refuse would cause offense or embarrassment to the donor or adversely affect the foreign relations of the United States, the gift may be accepted and deposited with the Chief

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4. With respect to gifts or decorations on deposit through 14 October 1966, Sec. 621.5 of the Department regulation states:

Any gift or decoration on deposit . . . on October 14, 1966, shall, following written application to the Chief of Protocol and subsequent approval by the Chief of Protocol and the appropriate agency, be released through the appropriate agency to the donee or his legal representative. Such donee may also, if authorized by the appropriate agency, wear any decoration so released. Approval for release will normally be given unless, from the special or unusual circumstances involved, it would appear to the Chief of Protocol to be improper to release the item. Any gifts or decorations not approved for release will become the property of the U. S. Government and will be used or disposed of in accordance with section 621.7.

5. The basic changes in the law because of PL 89-673 are:  
(a) Congress has consented in advance for Government employees to accept gifts valued at \$50 or less; and (b) when a gift valued at more than \$50 is accepted because refusal would embarrass the donor or adversely affect the foreign relations of the United States, such a gift is the property of the United States; the donee has no right or title therein.

6. Your question then is answered as follows:

a. Inasmuch as the intent of Congress in passing Public Law 89-673 was to make uniform the problem of accepting gifts for all Government employees and this Agency is not specifically exempt, I am of the opinion that we are subject to it.

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b. There is no legal objection to retaining gifts which are the property of the United States for official use when the Chief of Protocol is notified. Official use might include decorating an office wall or conference room with the gift, placing it on display within the Agency, or a similar use in an overseas post. However, the law prohibits the gift ever being turned over to the donee.

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official use is to be made of the gift, it should be forwarded to the Chief of Protocol for disposal.

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Office of General Counsel

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